

Tribunal Electoral del Poder Judicial de la Federación: Review of Judicial Processes and Institutional Structure

Report Prepared by Stefanie A. Lindquist, JD PhD¹
Principal Investigator and Foundation Professor of Law and Political Science
Arizona State University

Contents

Executive Summary	1
TEPJF Context and Challenges	2
Hyper-Lexis and Hyper-Reform	5
A Shifting Legal Tradition	7
Institutional Design and Comparison to the SCJN	8
Decision Making Process: Recommendations	11
Case Assignment Procedures	11
Hearing Process and Ex Parte Meetings	13
Judicial Symbols and Protocol.....	15
Social Media Usage and Voluntary Ethical Guidelines	16
Precedent, Opinion Justification, and Docket Control.....	18
Administrative Law Standards of Review	20
Appendix: Brief History of the Tribunal.....	24

Executive Summary

At the request of the Mexican *Tribunal Electoral del Poder Judicial de la Federación* (TEPJF),² this report was prepared to reflect upon the institutional context, structures, norms and rules that shape and govern the TEPJF's judicial functions, with the objective of offering recommendations on how to bolster the TEPJF's efficiency and efficacy as a crucial institution supporting Mexican democracy. This study was informed by (1) the academic literature on the TEPJF and on electoral Tribunals in other nations, (2) news reports and other public commentary on the TEPJF and on Mexican elections, (3) the Mexican Constitution and laws governing the TEPJF and other associated institutions such as the *Instituto Nacional Electoral de Mexico* (INE),³ (4) documents,

¹ The author thanks Markus Benavidez and Eric Braeutigam for their invaluable assistance in completing this report.

² Electoral Tribunal of the Federal Judiciary of Mexico. References herein to the TEPJF generally refer to the Superior Chamber of the Tribunal, with the Regional Chambers referenced specifically where relevant.

³ National Electoral Institute of Mexico.

decisions and data produced by the TEPJF, and (5) interviews with officials associated with the TEPJF and other electoral institutions in Mexico.

This report first offers information about the complex political, legal and institutional context in which the TEPJF operates and the manner in which that context presents challenges to judicial autonomy and operational efficiency. Second, the report offers recommendations for reforms that (1) mitigate the structural pressures on TEPJF identified in Part 1 of this report, and (2) are actionable within the confines of the current structure and amenable to the interests of relevant stakeholders. These recommendations include: (1) modifications to the random case assignment process and to the practice of publishing initial draft opinions, (2) elimination of ex parte hearings with litigants in judges' chambers, (3) elevation of judicial symbols associated with the TEPJF, (4) adoption of ethical guidelines for judges, especially for social media, (5) development of methods of docket control so as to free judges to create binding precedent, and (6) adoption of a more deferential standard of review for decisions rendered by the INE.

TEPJF Context and Challenges

The TEPJF plays a critical role in the Mexican electoral process. Resolving the most contentious and high-stakes disputes that affect the political future of the nation, the TEPJF serves as the final arbiter of all cases (1) arising from elections of the President of the Republic, federal Deputies and Senators, (2) challenging acts and resolutions of the electoral authorities, including the *Instituto Nacional Electoral* (INE), and (3) involving the infringement of citizens' political-electoral rights.⁴ In doing so, the TEPJF not only ensures that Mexican citizens' rights to participatory democracy are fully protected, but also ensures *finality* to electoral outcomes. Because drawn-out post-election contests have the potential to undermine the legitimacy of the winner, raise doubts in the public's mind about the integrity of the system, and create confusion within the government about how to implement policies in the short term (Douglas, 2013), democracies "crave" finality. Political actors and citizens may bring their claims before the TEPJF, where they will find a dispositive resolution that closes the door on additional post-election wrangling over outcomes. Assuming that the litigants accept and comply with the TEPJF's decisions, the democracy- and stability-enhancing benefits of this form of finality are obvious.⁵

As part of the federal judiciary, the TEPJF also serves another important institutional function. Because the specialized TEPJF diverts politically-charged cases from the regular docket of the *Suprema Corte de Justicia de*

⁴ Mexican Constitution of 1917 (as amended), Article 99.

⁵ "[T]he resolution [in election disputes] must be politically acceptable. The losing side must acquiesce, even to the operation of the law" (Foley, 2012, p. 290).

la Nación (SCJN)⁶, it insulates the SCJN and other courts of general jurisdiction from the potential political fallout that may occur during and after the resolution of electoral disputes. One need look no further than the U.S. Supreme Court’s decision in *Bush v. Gore* (2000) to understand the consequences that major election disputes entail for the reputation of courts of general jurisdiction.⁷ The TEPJF therefore serves to support the legitimacy and autonomy of the Mexican federal judiciary by acting as a lightning rod in cases that might otherwise politicize the SCJN and other generalized federal courts. Indeed, for more than a century, the SCJN demurred from resolving cases involving political-electoral rights in individual *amparo* suits on grounds that it could produce a destabilizing effect (Eisenstadt, 2004, p. 65). This restraintist stance—created under the leadership of Justice Iglesias Vallarta—was likely born of concerns over the negative impact to courts’ legitimacy that could result from drawing the judiciary into politicized disputes. As an alternative, specialized electoral tribunals like the TEPJF enable courts of general jurisdiction to continue in a posture of neutrality in highly-charged legal conflicts over election outcomes. As one commentator has noted, “one advantage [of electoral tribunal model of dispute resolution] is that it avoids involving the judicial branch in political conflicts that could unnecessarily damage the reputation and autonomy of the judiciary” (Hernandez-Huerta, 2017, p. 381).

While the shift in political-electoral dispute resolution to the specialized TEPJF thus likely benefits the judiciary as a whole, it concentrates public scrutiny on the TEPJF in every electoral cycle. Since 1996 when the TEPJF was created in its current institutional form, it has managed and resolved numerous high-profile cases that reflect its growing institutional autonomy at the center of major electoral conflicts. For example, in the 2000 gubernatorial election of Tabasco, the TEPJF invalidated the election on grounds of electoral fraud and vote-buying. In 2006, after ordering a recount of all polling sites with a 9% or smaller margin of victory, the TEPJF confirmed the election of PAN’s Felipe Calderón in the face of charges of election fraud by the losing candidate (López Obrador). In another high-profile case in 2021 involving President López Obrador’s National

⁶ Supreme Court of Justice of the Nation of Mexico.

⁷ Following the Court’s decision in *Bush v. Gore*, the U.S. public viewed the Court as more politicized, and the Court’s public approval rating dropped for a period after the decision was rendered (Gibson, Caldiera, & Spence, 2003). The U.S. Supreme Court’s decision in *Bush v. Gore* may have had other negative consequences as well, including initiating an era in which “preparing for post-election litigation is now a routine part of campaign strategy” in U.S. elections (Douglas, 2013, p. 1015). Douglas also notes that when elections “go into overtime” and are thrown into the courts, the risk of “taint” to the courts from the appearance of ideological or partisan decision making is at its height (Douglas, 2013, p. 1016).

Regeneration Party (MORENA), the TEPJF invalidated the candidacies of two MORENA gubernatorial candidates. In a direct conflict with the sitting president, the TEPJF also ruled in 2021 that President López Obrador may not discuss campaign issues or propagandize during his morning press briefings. In October of 2021, the TEPJF recently greenlighted a federal investigation into the President's brother for illegal party financing. These significant rulings, among others, have often placed the TEPJF in direct legal conflict with the party or parties in power in the elected branches.

Although these rulings have demonstrated the TEPJF's independence, they have also elevated external pressures on the Tribunal, with the President recently calling for a complete overhaul of the nation's electoral institutions, to include dismissing the sitting members of the TEPJF. Internal tensions in the Tribunal have also garnered attention in the news, with the judges on the TEPJF voting to remove the sitting president of the Tribunal in August of 2021. These conflicts—internal and external—constitute threats to the TEPJF's institutional legitimacy and durability. The question now is how the TEPJF can bolster its institutional authority in the face of these threats.

Triadic dispute resolution (TDR) theory offers one helpful lens through which to view challenges facing the TEPJF. In their seminal work on judicial dispute resolution, Shapiro (1981) and Stone Sweet (1999) present the social logic of third-party dispute resolution in which two disputants (the dyad) engage a third-party dispute resolver who is empowered to adjudicate conflicts. TDR channels otherwise intractable dyadic disputes into a dispute resolution process that, if respected, reduces the likelihood of violence or other extra-legal means for dispute resolution. Where the parties choose the third party to resolve their dispute through consent, the loser in the dispute has little grounds to challenge the legitimacy of the outcome because the parties consented to the arbitrator's authority. But once "law and office" is substituted for consent in the form of compulsory resolution before a governmental body, "very major destabilizing pressures on the triadic structure" emerge (Shapiro, 1981, p. 8). In particular, the loser must be convinced both that the rules and norms applied to him were not skewed in favor of the opponent, and that the judge is not allied with the opponent. "As institutionalized third parties with the power to decide in favor of one party of the other, courts risk their legitimacy in the eyes of

the loser every time the court actually resolves a dispute” (Lindquist, Martinek, & Hettinger, 2007, p. 436). Loss of legitimacy decreases parties’ willingness to comply with the court’s ruling.

As compulsory triadic dispute adjudicators, specialized courts such as electoral tribunals may find themselves facing “very major destabilizing pressures” because of their unique dockets and the charged political outcomes at stake in their rulings.⁸ The cases resolved by the TEPJF often involve zero-sum conflicts in which the Tribunal cannot craft orders that hand partial victories to parties who are on the losing end of the judgment (Stone Sweet, 1999, pp. 156-157; Lindquist, Martinek, & Hettinger, 2007). Only one candidate may hold political office at a time.⁹ Tight political races exacerbate this challenge. Drawing on evidence from the 2006 presidential contest in Mexico (as well as other recent elections in Latin America and elsewhere), Laurence Whitehead observes that the closeness of the 2006 election “severely tested” the legitimacy of the electoral authorities, especially because the Presidency constitutes the “one big prize in the Mexico electoral calendar [as it] carries a six year term” (Whitehead, 2007, p. 24). Given these high stakes and polarization in the electorate, Whitehead cautions that electoral authorities in Mexico cannot rely solely on their legal powers as a source of institutional legitimacy, but must also “be buttressed and reinforced by the media, academia, external supports, and ultimately and above all by the Mexican electorate at large” (Whitehead, 2007, p. 23).

Hyper-Lexis and Hyper-Reform

In addition to external political threats, the TEPJF operates within a legal environment characterized by “hyper-lexis,” a condition involving the “overwhelming proliferation of law” (Chiao, 2021, p. 130). In a 2013 report by the Venice Commission on electoral legislation in Mexico, the authors observed that electoral legislation in Mexico “is overly complex” in ways that can affect compliance and conformity with the regulations

⁸ While specialized courts have been labeled “the panacea of legal reform” (Arlota & Garoupa, 2016) because they enhance expertise and efficiency, some observers in the U.S. context have expressed concerns that judicial specialization carries risks. For example, Judge Posner has noted that specialized courts may be less independent than generalist courts because political branches of government may more easily monitor and control the specialized court. According to Judge Posner, “it is easier to predict how someone will decide cases in his specialty than how he will decide cases across the board,” thus enabling the legislature, executive and political parties to rely more easily on the appointment process to control the specialized Tribunal—especially when specialized judges enjoy shorter terms (Posner, 1983, p. 783; Howard, 2005). Other critics express concern that when specialized judges manage dockets with cases of high value to organized interests, judges may be subject to “capture” by those special interests (Jordan, 1982; Langston, 2020).

⁹ On the zero-sum nature of election disputes, see (Foley, 2012, p. 284).

(Biglino, Darmanovic, & Ranchev, 2013). Hyper-lexis affects compliance simply because “the effort required to familiarize oneself with law’s intricacies is overwhelming” (Chiao, 2021, p. 135). Hyper-lexis also promotes litigation, a consequence which is clearly reflected in the TEPJF’s burgeoning and crowded docket full of cases that must be decided within strict time frames.¹⁰ Finally, because of their pervasiveness, Mexico’s electoral laws must constantly scramble to keep up with changing technologies, such as those involving social media platforms. The legal requirements regulating propaganda on social media has caused the TEPJF to create a specialized tribunal (within a specialized tribunal) to address disputes and activities associated with media platforms powered by corporate entities that are located outside of the country.

Scholars have pointed out that hyper-lexis is not only a function of legal complexity, but also a function of law’s rate of change. “Hyper-reform” is a concept reflecting the frequent alteration of policies and institutions, where the frequency of reform has the potential to confuse the public, regulated parties, and even governmental actors. Commenting on the United States, for example, Paul Light has speculated that the increasing rate of regulatory reforms in the latter part of the twentieth century likely did little to improve governmental performance, and instead may have “created confusion within government about what Congress and the president really want” (Light, 2006). In Mexico, electoral reform, both statutory and constitutional, has become a constant feature of the legislative agenda, arising in response to almost every presidential election since the 1970s.¹¹ Hyper-reform also poses a problem of diminishing returns, where reform exhaustion sets in to reduce the public’s and elites’ interest in additional and needed reforms in the future.

Finally, frequent reforms that alter the design or staffing of governmental institutions may have one other important consequence: by affecting the likelihood of repeated interactions among personnel, institutional reforms may change the strategic calculations made by individuals working within those institutions. Cooperative norms such as *stare decisis* emerge within judicial institutions based on iterated interactions among

¹⁰ Nor do detailed regulations necessarily constrain judicial discretion, perhaps because complex legislation allows for multiple interpretations, entry points, and potentially conflicting provisions (Randazzo, Waterman, & Fix, 2011; Randazzo, Waterman, & Fine, 2006). Randazzo and his colleagues found that detailed statutes constrained judicial discretion in some substantive contexts, but in other contexts it allowed for more ideologically extreme decision making.

¹¹ Aimed at addressing the most recent charges of fraud or inequities in the process, electoral reform in Mexico thus may be characterized as “reactionary” to the extent that its elements are typically created in reaction to perceived flaws in electoral institutions and procedures highlighted in immediately preceding elections.

the judges, where tit-for-tat strategies reduce defection from cooperation and collegiality (Lindquist, 2011). Norms of cooperation may manifest in judges' reluctance to dissent or to overrule precedents authored by fellow judges. But where their collegial interactions are likely to continue only with low probability, judges may be more likely to discount the benefits of future cooperation in comparison to the contemporary payoffs associated with actions that serve their own personal preferences (Lindquist, 2011, p. 175). In an institutional environment characterized by hyper-reform, the frequency of legislative changes to court structures threatens to reduce the likelihood of repeated interactions among judicial personnel. The threat of constant reforms may therefore suppress the emergence of cooperative and collegial norms on the court.

A Shifting Legal Tradition

The TEPJF also operates within a civil law regime that is undergoing a transformation into a hybrid civil-common law system.¹² For example, recent constitutional amendments have enabled the SCJN and the TEPJF to create legally binding precedent under certain conditions. In the SCJN, precedent may be created by any decision supported by at least an eight-justice majority. In the TEPJF, binding precedent may be created by three uninterrupted decisions affirming a particular rule of law. These developments elevate the law-making authority of these two judicial institutions. At the same time, however, they also introduce new complexity into the decision-making process. To determine if three uninterrupted decisions support a particular rule at the TEPJF, for example, staff must track the Tribunal's opinions and issue bulletins announcing the binding precedent. This cumbersome process adds an additional layer of administration in the enunciation of precedential rulings.

In addition, both the SCJN and the TEPJF operate outside the traditional corps of career judges typical of a civil law judicial system. In civil law systems, judging is a lifelong profession that follows a specific career path. The judge corps itself manages appointments, education, promotion, and discipline within a closed system of professional jurists. In contrast, common law judges typically take the bench only after a period of practicing

¹² This development has been explicit in the context of criminal law cases, where constitutional amendments in 2008 required criminal trials to shift from an inquisitorial civil law approach to an oral adversarial system in the tradition of the common law (Zwier & Barney, 2012).

law in the public or private sector, and they are appointed by political authorities. Both the SCJN and the TEPJF clearly operate under this common law model: they are appointed with the participation of the political branches rather than promoted through the judge corps, and they are specifically exempted from disciplinary supervision by the Federal Judicial Council. As a consequence, the TEPJF (and the SCJN) generally must *self-regulate* in the interests of institutional legitimacy because impeachment stands as the only option for discipline and removal.

Institutional Design and Comparison to the SCJN

The Superior Chamber of the TEPJF is staffed by seven judges serving staggered nine-year terms. According to Article 99 of the Mexican Constitution, which establishes the TEPJF as a unit of the federal judiciary, TEPJF judges are nominated by the SCJN and confirmed by a 2/3 vote in the Senate. Nominees must meet the same requirements as those for justices on the SCJN: they must be 35 years of age, have held a law degree for at least 10 years, never have been convicted of a felony or other crime that involves reputational damage, lived in Mexico for at least two years prior to their appointment, and never have served in certain political positions. The compensation of TEPJF judges may not be diminished during their term. In terms of removal, TEPJF judges may be impeached by majority vote in the Chamber of Deputies for acts or omissions in office that “affect fundamental public interests or affect the proper exercise of their functions.”¹³ Removal may occur after trial in the Senate upon a two-thirds vote of its members.

Judges on the TEPJF serve nine-year terms, in contrast to the 15-year terms enjoyed by justices on the SCJN. Moreover, unlike SCJN justices, judges on the TEPJF are not granted a pension upon their retirement from the tribunal. The average age of judges on the TEPJF is 54; the oldest is 63 and the youngest 47. Many of the TEPJF judges are likely to pursue additional employment following their service on the Tribunal. The combination of a shorter term length, the lack of a pension, and the judges’ relative youth creates a context that may incentivize strategic behavior as judges look beyond their service to future employment in the field of

¹³ Mexican Constitution of 1917 (as amended), Article 109, Clause 1.

election law. To the extent that the TEPJF is the final arbiter of all election law claims, its institutional position is tantamount to the SCJN, but the constitutional and statutory protections for independence are not equal.

On the other hand, comparison to other nation's electoral courts reveals that the term length for TEPJF judges is not an outlier in terms of its brevity. The Costa Rican Electoral Tribunal, widely perceived as contributing to a durable and stable democracy, is composed of the six judges who are appointed for six-year terms by the Costa Rican Supreme Court. In Brazil, the seven judges on the Superior Electoral Tribunal serve for up to six years in consecutive two-year terms. Yet these tribunals' independence does not appear to be compromised by their shorter terms.¹⁴

It is worth noting, however, that the design of electoral tribunals in Costa Rica and Brazil differ in other significant ways from the Mexican electoral tribunal in their methods of appointment and removal. In Costa Rica, judges on the electoral court are appointed by the Costa Rican Supreme Court via a merit selection process, "without intervention by the political parties or Congress" (Sobrado & Aguilar, n.d.). In Brazil, the Superior Electoral Court judges are selected through secret ballot by the judges on the Brazilian Supreme Federal Court and the Superior Court of Justice, with two electoral court judges appointed by the President from a slate of candidates nominated by the Supreme Federal Court. Moreover, removal procedures against electoral judges in both Costa Rica and Brazil may be initiated only upon an initial supermajority vote in a chamber of Congress (Hernandez-Huerta, 2017, pp. 382, 387). These institutional design features led one scholar to conclude that, on a scale of 1-10 reflecting *de jure* institutional autonomy for institutions adjudicating electoral disputes (with a score of 10 denoting the greatest *de jure* autonomy), Brazil scored a 10 and Costa a 9 (Hernandez-Huerta, 2017, p. 382). In contrast, in Mexico, electoral judges are nominated by the SCJN but confirmed by the Senate, and may be removed by an impeachment process initiated by a simple majority of the Chamber of Deputies. Even in the face of these differences, Mexico earned a score of 7 on Hernandez-Huerta's scale—which also includes measures of fiscal autonomy, judicial qualifications, and a constitutionally-specified number of judges.

¹⁴ The Brazilian Electoral Court has been bold in pursuing claims of corruption against President Bolsonaro and his allies, which has significantly ratcheted up the tension between the Electoral Court, the Brazilian Supreme Federal Court, and the President (Rosati, 2021; Brito, 2021).

Perhaps more concerning is the relative comparison of the TEPJF to the SCJN. Although the TEPJF occupies the supreme position at the head of the electoral courts and resolves with finality almost all electoral disputes, the TEPJF's judges enjoy less institutional prestige because they serve 9 instead of 15 years, and because they do not earn a pension at the conclusion of their term. These factors may carry significant consequences for the willingness of some lawyers in Mexico to serve on the tribunal, or, at the least, makes the TEPJF less attractive from the standpoint of tenure and benefits.

In addition, confirmation in the Senate has led to horse trading in terms of the partisan affiliations of the TEPJF judges. In 2016, following MORENA's loss in the Presidential election, a concession was made by the PRI and PAN to re-staff the TEPJF. Although this concession was apparently intended to mollify MORENA, the seats on the TEPJF were divided between PAN, PRI and PRD, as MORENA had inadequate representation in the Senate to control any aspect of the appointment power (de Oca, 2018). Congress then enacted legislation to provide for staggered terms to ensure that the new appointees would not leave the tribunal at the same time. Ultimately, this legislative and party maneuvering over seats on the TEPJF no doubt contributed to the appearance of partisan loyalties by TEPJF judges, and failed to satisfy MORENA or President López Obrador, who continues to criticize the objectivity of the TEPJF in his daily briefings. As one commentator noted, "the fact that the appointments go through the Senate means that magistrate candidates are beholden to the political parties that endorse them" (de Oca, 2018, p. 3).¹⁵

Because of these issues, TEPJF judges must be *assiduously vigilant* in ensuring all aspects of the Tribunal's decision-making process are carefully examined to immunize the Tribunal against charges of favoritism or bias. Structural changes to the TEPJF, such as lengthening the judges' terms, would require legislative intervention, which may be difficult. Other personnel related issues, including the creation of a pension fund for TEPJF judges, may be less difficult and should be pursued if possible.

¹⁵ The notion that political actors may control seats on an ostensibly nonpartisan body figures prominently in an investigation of the Instituto Federal Electoral (IFE) (Estevez, Magar, & Rosas, 2008). Contrary to the prevailing insistence on a completely neutral IFE, the authors conclude that while the members of the IFE's Council-General did generally represent the interests of their party sponsors, that influence actually enhanced the legitimacy of the IFE because it allowed party-affiliated members with the opportunity to check each other's ambitions (Estevez, Magar, & Rosas, 2008). Party balance on the Council, they argue, increased the likelihood that the parties themselves would accept and comply with the IFE's decisions.

Decision Making Process: Recommendations

The discussion above highlights the importance of decision-making procedures that demonstrate the neutrality of the TDR process. This section discusses specific elements of the dispute resolution process at the TEPJF that could benefit from specific reforms in light of the TEPJF's role as final arbitrator in electoral disputes.

Case Assignment Procedures

Random case assignment is the *sine qua non* for appellate judicial bodies. At the TEPJF, cases are assigned to individual judges who then propose a resolution and opinion for the entire court to consider through circulation of opinions and a public hearing.¹⁶ Because judges who initiate review of an individual case wield the analytical power associated with first-mover status in matters assigned to them, random assignment is critical to ensure against perceptions of bias.¹⁷ The Clerk's Office at the TEPJF does randomly assign cases to judges based on an alphabetical distribution of cases to judges as the cases are filed. But the human factor involved in this case assignment process may undermine perceptions of its legitimacy, even if the Clerk assigns cases randomly in an absolutely flawless process.

Examples of effective court rules governing random opinion assignment abound. One such exemplar is that of the U.S. District Court for the Northern District of Illinois, whose Local Rule 40.1 specifically provides that the assignment of cases shall be "by lot" and that any person who violates the case assignment process shall be punished by contempt of court. Official commentary to the Rule specifies that (1) the assignment procedure is computerized using a shuffle procedure that assigns cases to available judges, (2) the deputies responsible for the assignment process do not assign cases, and (3) "for obvious security reasons," the deputies

¹⁶ Not all TEPJF decisions are the subject of a public hearing, as some "private" matters may be decided without such a hearing in accordance with the TEPJF's procedural rules and regulations.

¹⁷ In a famous study of opinion assignment in race relations cases in the U.S. Court of Appeals for the Fifth Circuit, statistical analysis revealed the likelihood that random case assignment practices were abandoned in order to produce a more uniform result in favor of plaintiffs suing on grounds of discrimination (Atkins & Zavoina, 1974). This analysis subjected the circuit to external criticism for manipulating the docket, including by judges on the court itself. *See Armstrong v. Board of Education*, 323 F.2d 333, 358 (5th Cir. 1964)(Cameron, J., dissenting).

who implement the assignment procedures have no access to the software that shuffles the assignments.¹⁸ The TEPJF could pursue a similar strategy by hiring a contractor to automate the randomizing process of case assignment and adopting rules that impose sanctions on any violations of those procedures.

Moreover, and perhaps more importantly, the initial assignment of a project to an individual judge on the TEPJF should remain confidential until the entire court has an opportunity to review and adopt or reject the proposed disposition and opinion. In recent years, some of the TEPJF judges have initiated a practice of posting initial drafts of their rulings on social media in an effort to stake out a position and thus forestall claims that the parties have manipulated the proposed outcome. While this practice was initiated with good intentions to demonstrate the independence of individual judges, it has significant downsides. First, it elevates the role of the individual judge in the decision-making process, which undermines perceptions that the Tribunal operates as a *collegial appellate body* governed by majority rule. Second, it places the other judges on the Tribunal in an awkward position in terms of recommending changes during opinion circulation and hearing debates, exposing future changes to the court's final opinion to public scrutiny.¹⁹ In cases where the TEPJF decides to resolve the case differently than would the initially proposed opinion, exposing the initial opinion to public scrutiny may disappoint litigants whose victory "slipped away" once the other judges voted, further undermining the likelihood of compliance and reducing perceptions of legitimacy. Third, this practice has the potential to make the TEPJF look more fractured to the public. No opinion, whether majority, dissenting or concurring, should be made public by any individual judge at any time, using social media, the internet, or any other distribution mechanism. The Tribunal decides and issues rulings, *not the individual judge*. For the sake of institutional legitimacy, any practice that elevates the profile of individual judges at the expense of perceptions of the Tribunal *as a collegial appellate body* should be discontinued.

¹⁸ The district court's local rules may be found at <https://www.ilcd.uscourts.gov/court-info/local-rules-and-orders/local-rules>.

¹⁹ In a recent reflection on secrecy on the U.S. Supreme Court, one law professor has argued that the Court goes too far with its confidentiality requirements, but notes that "if the votes were publicized immediately, justices might be unwilling to back off their initial positions And when the justices *did* change their minds, disappointed litigants (and the public) might be less willing to accept decisions if they knew the cases almost went the other way" (Epps, 2020).

Implementing this change may require adoption of a formal norm through court rules, or adherence to an informal norm. No matter how the new rule is adopted, however, implementation will require a culture of strict adherence to confidentiality within the Tribunal. Leaks are always a problem (and apparently a real concern at the TEPJF), and therefore some sanctioning mechanism may be necessary to ensure that all judges and staff comply with rules of confidentiality. At the U.S. Supreme Court, for example, all law clerks sign a confidentiality agreement that remains in effect even after the clerk leaves the Court. The Supreme Court has also adopted a code of conduct for its clerks that requires “complete confidentiality, accuracy and loyalty” to the justices and to the Court as a whole (the code of conduct is itself confidential!) (Miller, 2014). It is not clear what sanctioning mechanism are available to the Court for violation of these rules, but anecdotal evidence suggests that reputational factors play a role. For example, Justice Scalia solemnly told his clerks that he would ruin their careers if they exposed confidential information about his chambers to the public (Epps, 2020). The TEPJF could consider more formal sanctions for leaking materials prematurely to the press or the public, including contempt sanctions.

Hearing Process and Ex Parte Meetings

Once a case has been assigned to an individual TEPJF judge, that judge drafts an opinion for the court, which is circulated in advance of a public hearing that is currently held on Zoom and made available on Twitter and YouTube. Some concern has been expressed that these hearings typically do not involve deliberation. Instead, the judges deliver short speeches about their position on a given case. Moreover, these hearings generally do not involve oral argument by the litigants. Rather than oral arguments made to the full panel, the tradition at the TEPJF is for litigants to make their oral arguments in person in the judges’ individual chambers at the Tribunal. These meetings tend to be held *ex parte* in that all parties to the litigation are not invited.

Ex parte contacts and communications such as these carry significant risks. First, they expose judges to one-sided argumentation that may mislead judges who do not benefit from the opposing litigant’s information in rebuttal. Second, they may create the appearance of bias toward a particular party, or worse, the appearance that one party is in a position of influence over the judge, signaling corruption.

In common law adversarial systems like the United States, *ex parte* communications are strictly regulated as a matter of judicial ethics. According to the American Bar Association's Model Code of Judicial Ethics (Rule 2.9), *ex parte* communications should be avoided:

(A) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication, and gives the parties an opportunity to respond.

The Code of Ethics for United States judges contains similar provisions in its Canon 3.

Admittedly, these restrictions are associated with adversarial systems of judging in common law regimes, rather than civil law regimes. With the exception of its criminal law system, Mexico follows the traditions of a civil law system, where (1) the judge typically has responsibility for building the record, (2) the judicial decision is largely based on a written record, and (3) the judge may seek out expert opinions and other witness testimony in the process of building the record (Koch, 2004). Civil law systems have thus been more open to *ex parte* communications with the parties. At least one commentator has noted that the problems of *ex parte* communications has received little attention in discussions of judicial reforms in Latin America, and that *ex parte* contacts are widely practiced in Latin America because they are not regulated by code (Dakolias, 1994, p. 199).²⁰ Indeed, although the Organic Law of the Federal Judiciary includes several provisions governing judicial ethics, it includes no proscription against *ex parte* communications with the parties. This comports with the prevailing rule in many continental civil law systems that allow *ex parte* contact between judges and litigants on grounds that communications with party attorneys are helpful to the judge as he or she gathers evidence.

As noted in above, however Mexico is now operating as a hybrid civil-common law system, with an adversarial system recently adopted by constitutional amendment for criminal cases, and with the recognition of judicial precedents as binding law. Moreover, TEPJF judges do not emerge from or serve within the cadre

²⁰ The author further suggest that *ex parte* communication contributes to the corruption that permeates judicial systems in Latin America (Dakolias, 1994, p. 199).

of professional judges typical of a civil law system, making them more similar to common law judges than civil law judges. Although the TEPJF may choose not to abandon all traditions associated with continental civil law traditions, its uniquely vulnerable role in the federal judiciary—which requires it to manage many of the most high-profile politicized cases in the nation—should cause the Tribunal to reconsider whether certain ethics rules associated with the common law tradition are appropriate to preserve the TEPJF’s legitimacy as triadic dispute resolver. Banning *ex parte* contacts between judges and litigants may be a useful step in that direction.

Judicial Symbols and Protocol

In their work on triadic dispute resolution described above, Professors Stone Sweet and Shapiro note that courts may adopt certain strategies to convince the parties that the judge is a neutral arbiter whose personality and ideological convictions do not bias case resolution. One such strategy, for example, involves legal vestments. Ecclesiastical in origin, the judicial robe originated in England to signify the authority of the judge. Although “a few yards of black cloth cannot in themselves make a judicial giant out of a pygmy” (Ferguson, 1956, p. 168), they do serve the function of de-personalizing the judge. As one judge in Arizona has described it, “When I put on the black robe I am reminded that putting on that robe is tantamount to a ‘small death,’ a temporary setting aside of myself; my needs, my wants or preferences, my prejudices.” Thus robes may have the effect of (literally) cloaking the personality of the judge as a symbol reflecting the rule of law rather than the rule of man.²¹

Experimental research has demonstrated that exposure to judicial symbols has a significant effect on citizens’ acquiescence to disappointing judicial decisions. In an innovative paper, Gibson, Lodge and Woodson (2014) test the proposition that exposure to judicial symbols—such as the robe, gavel and cathedral-like court buildings—condition citizens’ willingness to accept judicial decisions with which they disagree. Using an experimental design that exposed one group to symbols (such as photos of judges in robes or a gavel) against a control group with no exposure to symbols, the group exposed to the symbols of judicial authority were

²¹ Not all commentators support the use of the judicial robe. Famously, Judge Jerome Frank concluded that the judicial robe “nourishes pomposity, intimidates laymen who appear before the court, and serves to shield the judge from rational inquiry” (Ferguson, 1956, p. 170).

significantly less likely to demonstrate resistance to court decisions (Gibson, Lodge, & Woodson, 2014). These findings comport with those of other research testing the effects of symbols, such as the American flag, on egalitarian attitudes toward “out-groups” (Butz, Plant, & Doerr, 2007).

In light of these research findings, it would be useful for the TEPJF to consider how it deploys symbols of judicial authority. This is especially important given that the TEPJF hearings are now held via Zoom, with the individual judges represented by a block on the computer screen. Each judge’s Zoom backgrounds and attire highlight the unique personalities of each judge, and eliminates the benefits of a physical dias in the court’s impressive building.

Social Media Usage and Voluntary Ethical Guidelines

De-personalizing justice at the TEPJF is critical to the Tribunal’s institutional legitimacy, particularly in light of an appointment process that leads to public perceptions that individual judges were selected to represent the interests of political parties. Judicial symbols such as the robe serve to elevate the role and importance of the institution over the unique personality of individual judges who serve within it. Similarly, norms of judicial behavior on the Tribunal should be evaluated carefully to avoid perceptions of fragmentation on the bench and to ensure that the activities of individual judges do not overshadow or undermine the Tribunal’s legitimacy.

One potentially problematic activity involves individual judge’s use of social media. Internet and social media platforms such as Twitter can certainly offer effective fora in which judges can communicate with their communities and educate the public about the courts. But the pitfalls are also considerable. First, the presence of friends and followers on social media sites can create the appearance of partiality toward particular groups or litigants, even if the judge has no control over who chooses to friend and follow her. A judge’s use of “likes” raises similar issues on platforms such as Facebook. Second, while posting information about a judge’s involvement in the community (such as speaking engagements or charitable activities) may be fine, posts that involve matters pending before the Tribunal or that expose internal conflicts within the Tribunal, are far more problematic. One judge has recommended a list of social media activities to avoid, including:

- Posts, comments or even “likes” that are political, show a strong bias or possible influence, are discriminatory or derogatory, or display inappropriate humor;

- Posts and comments on pending or impending cases;
- Personal criticism of political figures, lawyers, litigants [or other judges];
- Direct ex parte communication via social media with one party on a pending or impending matter;
- Provision of legal advice; and
- Posts related to fundraising (Reyes, 2019, p. 24).

Because the individual judges on the TEPJF are active on social media, it may be useful for the Tribunal to consider adopting standards or guidelines that govern judicial activities on the internet. A prevailing consideration in that effort should be whether proposed guidelines would promote perceptions of judges' impartiality and neutrality, as well as shield the Tribunal from perceptions that the institution is fragmented and conflicted rather than collegial.

The adoption of ethical guidelines for social media usage could also be initiated in coordination with a broader effort to adopt a code of ethics specifically tailored for the Tribunal and its staff. Article 110 of the Organic Law of the Federal Judiciary sets forth a list of ethical and performance standards that apply to federal judges, but the TEPJF is explicitly exempted from supervision by the Federal Judicial Council, the body that otherwise disciplines federal judges for violations of those rules.²² This institutional arrangement is similar to that of the U.S. Supreme Court. As in Mexico, federal judges in the United States are subject to a code of conduct that, by its explicit terms, does not apply to the U.S. Supreme Court (Lewis, 2019).²³ Legislation has been proposed in the U.S. Congress to impose a code of conduct on the Supreme Court, although the constitutionality of such legislation may be doubtful.²⁴ But calls for the Court to adopt its own voluntary code of conduct have become louder in recent years, especially in light of the weakening of the Court's public approval rating and institutional legitimacy caused by battles over Court appointments in Congress. According to one law professor calling for this reform:

The Court must protect and preserve its own position as one of three, co-equal branches of government. To do that, it must act in every way possible to signal to the public that the institution and its members—the justices—are above reproach. One way it can do so is to adopt a code of ethics that government its members, just as ever other [federal] judge in this country is similarly governed (Martinez, 2020).

²² Organic Law of the Federal Judiciary, Articles 73, 100(I)..

²³ One U.S. federal code provision does refer to the “justices” in its admonition that judges should recuse themselves from cases in which they have a conflict of interest, but it is not clear how this provision would be enforced against a Supreme Court justice. See 28 U.S.C. § 455. Otherwise the Court is not specifically subject to any other code provisions regarding judicial ethics.

²⁴ Legislation mandating that Supreme Court justices follow a particular code of conduct may violate the constitutional doctrine of separation of powers (Lewis, 2019).

The TEPJF members could similarly consider the voluntary adoption of a code of conduct to guide judicial behavior as well as the conduct of staff members at the Tribunal.

Precedent, Opinion Justification, and Docket Control

Perhaps the most important means for courts to bolster their legitimacy is the offering of normative justifications for their decisions. Triadic dispute resolvers play a critical role in shaping the normative legal structure through the development of precedential rules that are concrete, particular, and retrospective as to the parties to the dispute (Stone Sweet, 1999, p. 156). Clear and consistent normative justifications serve several functions pursuant to the doctrine of *stare desisis*: they provide guidance for the orderly management of the citizens' affairs, they promote stability in the rule of law, and, through their predictability, they reduce incentives to litigate. Constitutional amendments in 2021 explicitly authorized the TEPJF to develop precedential rules in a series of three uninterrupted opinions. Implementing this new power effectively will contribute to strengthening the Tribunal's institutional legitimacy.

Unfortunately, the TEPJF has been criticized for not taking advantage of the opportunity to establish clear precedents when the opportunity arose (de Oca, 2018). This is likely due, in part, to the exceedingly onerous time pressures under which the TEPJF renders decisions and to its excessively burdensome docket. How can the TEPJF address these concerns effectively, especially since the TEPJF has now become critical to the development of the normative structure governing elections through the creation of binding precedents?

Some lessons may be taken, once again, from the U.S. Supreme Court. One of the key developments in the institutionalization of the Supreme Court involved the power of the Court to control its docket, which Congress provided in 1925 (McGuire, 2004). Expanding the writ of certiorari and reducing the Court's mandatory docket freed the Court to focus on the most precedentially important cases and to craft opinions to provide normative guidance more carefully.²⁵ In the case of judicial decision making, one commentator has concluded that "quantity negatively correlates with quality" (Fontana, 2011).

²⁵ One might argue that docket control simply offered the justices more time to write longer opinions, and the data bear that out. See (Black & Spriggs, 2008).

Article 169 of the Organic Law of the Federal Judiciary provides detailed information about the original and appellate jurisdiction of the Superior Chamber, requiring the TEPJF to resolve (1) electoral disputes in presidential elections (original), (2) appeals requesting reconsideration of decisions rendered by the Regional Chambers in congressional elections (appellate), (3) challenges to the acts and resolutions of the central body of the INE (original), (4) constitutional challenges to the organization and execution of gubernatorial elections and the mayoral election in Mexico City (original), (5) citizen suits for violation of political-electoral rights (original), and (6) suits challenging sanctions imposed by the INE (original).²⁶ The Superior Chamber may also exercise also the power of attraction, either at its own initiative or at the request of a party, to review judgments of the Regional Chambers (appellate).²⁷ Note that much of the TEPJF's jurisdiction is original in nature, in that cases come to the court directly rather than through appellate review. These provisions impose an enormously burdensome docket on the TEPJF, which is exacerbated by mandatory deadlines for the court's decisions and by the proliferation of litigation generated by conditions of hyper-lexis and hyper-reform.

The electoral reform of 2014 created the Specialized Chamber to resolve cases involving media issues, which may contribute to managing the TEPJF's burgeoning docket. But even more aggressive means to manage the TEPJF's docket must be explored. In the U.S. district and circuit courts, a number of case-management practices have emerged to enable federal judges to address their burgeoning caseloads (Levy, 2011; Lindquist, 2007). Such caseload management procedures include (1) the extensive use of staff attorneys to manage repetitive claims such as those involving social security, (2) the choice to designate certain opinions as "unpublished" and therefore nonprecedential, (3) the selective allocation of oral argument only to cases of significant precedential impact, and (4) the use of senior judges and judges sitting by designation to reduce the per capita workload (Lindquist, 2007). Some of these innovations may not be appropriate at the TEPJF. Nevertheless, these or other means to manage the TEPJF's docket would free the Tribunal's judges to spend time ensuring that its opinions meet the highest standards of normative justification and create a body of precedents that enhance predictability and stability in election law. The following section offers one other

²⁶ Organic Law of the Federal Judiciary, Article 169(I)(a)-e).

²⁷ Organic Law of the Federal Judiciary, Article 169(XV-XVI).

means of reducing workload at the TEPJF—the creation of more deferential standards of review for decisions by the INE.

Administrative Law Standards of Review

The Tribunal and the INE are closely associated institutions with complementary roles in the electoral system in Mexico. Both are constitutionally established entities pursuant to Articles 99 and 41 in the Mexican Constitution. With respect to judicial review of the INE’s activities and rulings, Article 99 specifies that the Tribunal will exercise jurisdiction over “contestations of acts and resolutions issued by the federal electoral authority,” over sanctions imposed by the INE on political and private entities, and over “matters that the INE submits to its consideration” for violations of media constraints set forth in Article 41.

In addition to these constitutional provisions, electoral disputes are governed by the General Law on the System of Contestation in Electoral Matters and by the Organic Law of the Judiciary. In terms of review of INE rulings and decisions, Article 6, Section 3 of the General Law on the System of Contestation in Electoral Matters indicates that the Electoral Tribunal will resolve all matters before it with full or plenary jurisdiction—in U.S. parlance, with “de novo review.” The Electoral Tribunal’s Thesis XIX (2003) expands on the scope of its jurisdiction, explaining that plenary jurisdiction will operate when the record is complete and when the irregularities at issue “consist exclusively of infringements of the invoked law.” The General Law on the System of Contestation of Electoral Matters imposes a burden of proof on parties challenging specific activities as violative of electoral rules: the record shall “generate conviction about the veracity of the facts asserted.”²⁸ Once the record is compiled in the INE following the filing of a complaint, it must be forwarded to a judge on the Electoral Tribunal for dismissal or resolution.²⁹ When the record presented by the INE is insufficient to enable the Tribunal to operate de novo and to dismiss or resolve the complaint, the judges often find themselves in the position of having to return the record to the INE for further elaboration.

²⁸ This burden of proof is specified in Article 16, Paragraph 4 of the General Law on the System of Contestation of Electoral Matters.

²⁹ The INE appears to have some authority to resolve complaints (see Article 4, Section 1 of the General Law on the System of Contestation of Electoral Matters, indicating the INE’s responsibility to “hear and decide on the appeal for review”).

One of the justifications for plenary jurisdiction offered in Thesis XIX is that the Tribunal must work expeditiously in the face of electoral deadlines. But this form of judicial review—in combination with the back-and-forth development of the record between the INE and the Tribunal—places the Tribunal in an awkward position. By way of comparison, in the United States, administrative agencies typically employ administrative law judges to adjudicate and resolve complaints initially and to ensure that the record is sufficiently complete to facilitate judicial review. In Mexico, the process of electoral dispute resolution—while involving an administrative agency (the INE)—effectively appoints the Electoral Tribunal as the initial adjudicator in electoral disputes, where it serves as a body of super-ALJs appointed within the judicial branch. As such, the Tribunal as a judicial body must ensure that the record is complete for the purposes of adjudication as a matter of initial jurisdiction.

In light of the tight deadlines to resolve electoral disputes in Mexico, deploying the Tribunal as an adjudicator of first instance may be necessary. On the other hand, the frequent interactions with the INE to complete the record raises concerns under traditional separation of powers doctrine. In the United States, federal administrative law judges are subject to the Administrative Procedure Act (APA), which imposes strict constraints on collaboration between ALJs and investigative or prosecuting personnel in an agency. Section 554 of the APA specifies that “[a]n employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advice in the decision, recommended decision, or agency review . . . except as witness or counsel in public proceedings.” 5 U.S.C. § 554(d). The APA also provides that ALJ’s may not “consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate.” 5 U.S.C. § 554 (d)(1). The APA’s limitations on agency personnel’s involvement in the adjudicatory process within the agency is intended to correct the significant separation of powers problems associated with a combination of functions (rulemaking, enforcement, and adjudication) within a single governmental body (Asimow, 1981). Judicial review also provides a corrective in the form of oversight of agency decision making and adjudication. In terms of judicial review of agency adjudication, the federal courts do not operate pursuant to a *de novo* standard, but are constrained to overturn agency orders following adjudication only if the agency’s decision is “unsupported by

substantial evidence.” 5 U.S.C. § 706(2)(e). Judicial review therefore serves to ensure that the agency’s actions in resolution of a particular dispute are sufficiently grounded in evidence, while simultaneously preserving judicial independence from the agency’s internal processes.

Admittedly, the notion of judicial deference to agency decision making is not part of the civil law tradition. Moreover, unlike administrative agencies in the U.S., the INE is a constitutional entity, deriving its institutional authority from the Mexican Constitution itself. Thus the Tribunal and the INE sit within a context and legal tradition different than that of U.S. courts and agencies. Nevertheless, the comparison provides some useful insights. First, the Tribunal appears to sit in an awkward institutional position vis a vis the INE. It can and must review the INE’s rulings and regulations, including in the case of sanctions, and thus it exercises supervisory authority over the agency in cases in which the INE is a party to a dispute, and must occasionally contradict the INE’s actions. On the other hand, the Tribunal is dependent on the agency to ensure that it is able to perform the Tribunal’s adjudicatory functions with a full record, and must collaborate with the INE to achieve its mission. Frequent collaborative interactions with the INE—while useful—may therefore raise questions in the public’s mind about the objectivity of the Tribunal with respect to the INE when it acts as a litigant. Moreover, this situation may produce incentives for members of the Tribunal to revise INE rulings on sanctions in order to establish the Tribunal’s independence in the eyes of the public and political elites. The Tribunal’s plenary power of review means that the INE’s decisions, based on its own expertise, receive no deference before the court. These structural sources of potential tension between the two institutions could be mitigated by formal rules protecting the Tribunal’s independence such as those provided in the APA. Indeed, the most recent data on judicial review of the INE’s sanctioning decisions indicates that the Superior Chamber of the TEPJF reverses 33.4% of those decisions, which constitutes a reversal rate that likely contributes to tensions between the TEPJF and the INE.³⁰

Finally, I will note that the burden of proof in cases involving the INE has also become an issue in TEPJF rulings. At least one scholar has criticized the TEPJF for shifting the burden of proof on certain factual matters

³⁰ According to data provided by the TEPJF, the Superior Chamber invalidated 95 of 286 rulings by the INE in the most recent electoral cycle (update: November 19th, 2021)

from the candidates to the INE (de Oca, 2018). The cases that drew particular criticism had to do with certain signature requirements for candidates to qualify for the ballot. Applying a more deferential standard of review to the INE's decisions would eliminate these types of concerns, enable more consistent precedent to be developed, and insulate the TEPJF from perceptions of bias towards individual candidates or parties.

Appendix: Brief History of the Tribunal

The current institutional design of the TEPJF is the product of several decades of electoral reform in Mexico aimed at addressing widespread electoral fraud (Eisenstadt, 2004, p. 725). Electoral reform, both statutory and constitutional, has become a constant feature in Mexican politics, arising in response to almost every presidential election since the 1970s. Aimed at addressing the most recent charges of fraud or inequities in the process, electoral reform in Mexico thus may be characterized as “reactionary” to the extent that its elements are typically created in reaction to perceived flaws in electoral institutions and procedures highlighted in immediately preceding elections. Whatever their provenance, electoral reforms in Mexico have contributed substantially to the development of a competitive multi-party elections following 75 years of PRI hegemony. As Professor Heather Gerken has noted, “[i]t is hard not to be impressed with Mexico’s election reforms during the last two decades” (Gerken, 2009, p. 163). The following discussion provides a thumbnail sketch of those reforms, with a particular focus on reforms regarding electoral dispute resolution.

Until the late 1970s, electoral disputes in Mexico were resolved through recourse to Electoral Colleges in the Chamber of Deputies or the Senate. Combined with nineteenth-century rulings by the Mexican *Suprema Corte de Justicia de la Nación* (SCJN) that political rights were nonjusticiable as individual rights, this system of electoral dispute resolution placed authority to resolve electoral complaints solely in the political branches without oversight by the judiciary (Berruecos, 2003, p. 806). During the period of uninterrupted single-party rule by the Party of the Institutional Revolution (PRI) throughout the twentieth century, the system of political oversight reinforced PRI’s hegemony by enabling the ruling party to legitimize flawed elections. Although other parties emerged during the period of PRI hegemony, including the main opposition National Action Party (PAN), they largely participated in the government through a series of concessions (“concertaciones”) (Eisenstadt, 2004, p. 727), in which the PRI and PAN reached post-electoral agreements granting PAN representation in local and state elections in exchange for allowing PRI continuing dominance in Mexican political institutions (Eisenstadt, 1999, p. 85).

Tensions over the PRI’s political control reached a critical point during the presidential election of 1976, in which PAN refused to advance a presidential candidate in an effort to “expose the charade-like nature of

Mexican elections” (Grayson, 1976, p. 52; Poblano, 2009, p. 132). To avoid political violence and instability, the PRI agreed to political reforms that would enable greater political representation, participation and stability (de Sierra, 2014, pp. 5-6). The *Ley Federal de Organizaciones Políticas y Procesos Eletorales* (LOPPE) of 1977 opened the door to increased electoral competition by providing for a system of proportional representation in the legislature, legal representation for opposition parties, and public financing for political parties’ electoral expenses.

The 1977 reform introduced a judicial body into the process of electoral dispute resolution. As noted above, prior to 1977 electoral disputes were resolved by electoral colleges in the political branches (Berruecos, 2003, p. 804).³¹ In contrast, LOPPE introduced limited judicial review to the process, providing the right to appeal decisions of the electoral colleges to the SCJN, but with further appeal from the Court’s judgment to the electoral colleges once again (Berruecos, 2003, p. 807). This “mixed” system of judicial-legislative control over electoral disputes proved unworkable, as it essentially placed the SCJN in the role of advisor rather than adjudicator. Thus in 1987, the newly enacted Federal Electoral Code eliminated the right to appeal electoral disputes to the SCJN and introduced the first iteration of a separate electoral court—the *Tribunal de lo Contencioso Electoral* (TRICOEL). TRICOEL was an autonomous *administrative* body that held the power to hear appeals in post-electoral disputes, but its rulings continued to be subject to final review by the electoral colleges in the Chamber of Deputies and in the Senate. Following the controversial 1988 presidential election, it quickly became clear that TRICOEL’s decisions and recommendations were not viewed as legitimate (Eisenstadt, 2004, p. 75).³² Spurred by the flawed election in 1988, in 1990 Mexico enacted another comprehensive reform, establishing the Instituto Federal Electoral (IFE) as the administrative body powered with the authority to supervise elections, and replacing TRICOEL with the Federal Electoral Tribunal (TFE). Unlike magistrates on TRICOEL, who were nominated by the parties, judges on the TFE were nominated by the President, and TFE

³¹ PRI supported this following the decision of the opposition party, the National Action Party (PAN), not to run a presidential candidate, which undermined PRI’s claims to legitimacy as a duly elected party in power (Eisenstadt, 2004, p. 728).

³² Institutionally, TRICOEL suffered from a flawed appointment process that undermined its legitimacy: its judges were nominated by the political parties and confirmed by congressional majority (Berruecos, 2003, p. 807). *See also* (Eisenstadt 2004, p. 729) (noting that the political appointment of magistrates to TRICOEL undermined perceptions of independence from the PRI).

was established as an autonomous *jurisdictional*—rather than administrative—organ. Moreover, TFE enjoyed strengthened authority through subpoena powers and broader discretion to bolster the case record, and to sanction parties that did not comply with its rulings. While the TFE was given more power and status than in its previous iteration, it did not hold complete power over electoral matters. While it could sanction parties for not complying with its rulings, the rulings could be reviewed and modified by a vote of two-thirds of the members of the Electoral College in the Chamber of Deputies or the Senate. In 1993, the role of the TFE was further modified when it was given the power to certify electoral results and set campaign spending limits, but the most important change was an amendment to the Constitution which officially defined the TFE as “the highest jurisdictional authority on electoral matter[s].”

Additional constitutional and statutory reforms in 1996 further strengthened electoral institutions in Mexico, by (1) separating the IFE from the executive branch by removing the Secretary of the Interior from leadership and replacing him with a congressionally-confirmed nonpartisan citizen, and (2) enlarging the jurisdiction and finality of the electoral Tribunal within a new entity—the *Tribunal Electoral del Poder Judicial de la Federación* (TEPJF). Formally incorporated into the judiciary (judges on the TEPJF are nominated by the SCJN and confirmed by the Senate), the TEPJF could issue rulings that were final as to all electoral disputes without the potential for reversal by the Electoral Colleges (de Sierra, 2014, pp. 77-79).

TEPJF is divided into a Superior Chamber, five regional chambers and a specialized regional chamber. The Superior Chamber was established as a permanent organ with its headquarters in Mexico City, and is composed of seven judges who serve a tenure of nine years. A chief judge is elected by the TEPJF to serve a term of four years. As the final authority on electoral disputes, the Superior Chamber may hear challenges related to Presidential elections, gubernatorial elections, congressional elections, elections for the head of the Federal District, and rulings pronounced by the INE. Five regional chambers and a specialized regional chamber, with headquarters in Mexico City, Guadalajara, Toluca, Monterrey, and Xalapa, were also established, each composed of a panel of three judges serving eight-year terms. Regional chambers hear challenges on local or regional elections, including those related to the election of representatives and senators elected, the election of members of public office in city councils, the election of local deputies, and the election of several other local

public offices. The specialized regional chamber hears challenges on access to radio and television of parties and candidates, impartial application of public resources, electoral propaganda and pre-campaign and campaign acts, among others. Only the Superior Chamber may hear challenges to Presidential election results.

Further reforms followed in 2002 and 2007. When the percentage of women in Congress decreased in the elections of 2000, women's groups in Mexico lobbied for gender quotas for political candidates. Quotas were adopted in 2002 in a law that withstood a constitutional challenge before the SCJN (Baldez, 2004). Reactions to charges of inequities and fraud in the 2006 produced additional reforms in 2007, which expanded regulations regarding campaign finance, candidates' use of the media, and the organization of the political parties.³³ The 2007 reform also made the TEPJF regional tribunals permanent, and granted the TEPJF the power to refuse to enforce unconstitutional electoral laws. This latter reform measure requires TEPJF to refer constitutional invalidations to the SCJN for review, thus creating a linkage to the SCJN in cases raising issues regarding the constitutionality of election laws. Finally, in 2020, legislative and constitutional reforms enabled the SCJN to establish precedent in a decision that attracts a supermajority of eight votes, and the Superior Chamber of the TEPJF to establish precedent in a series of three uninterrupted decisions (Rios-Figueroa, 2021).

³³ To address implementation of the gender quota laws, as well as to decide cases related to media regulation, the TEPJF has established a specialized branch of the Tribunal staffed with judges focused exclusively on these issues.

Bibliography

- Anderson, C. J., & Guillory, C. A. (1997). Political Institutions and Satisfaction with Democracy: A Cross-National Analysis of Consensus and Majoritarian Systems. *The American Political Science Review*, 91(1), 66-81.
- Arlota, C., & Garoupa, N. (2016). Do Specialized Courts Make a Difference? Evidence from Brazilian State Supreme Courts. *European Business Law Review*, 27(4), 487-500.
- Asimow, M. (1981). When the Curtain Falls: Separation of Functions in the Federal Administrative Agencies. *Columbia Law Review*, 81(4), 759-820.
- Atkins, B. M., & Zavoina, W. (1974). Judicial Leadership on the Courts of Appeals: A Probability Analysis of Panel Assignment in Race Relations Cases on the Fifth Circuit. *American Journal of Political Science*, 18(4), 701-711.
- Baldez, L. (2004). Elected Bodies: The Gender Quota Law for Legislative Candidates in Mexico. *Legislative Studies Quarterly*, 29(2), 231-258.
- Barnes, R., & Kim, S. K. (2021, September 26). *Supreme Court Observers See Trouble Ahead as Public Approval of Justices Erodes*. Retrieved from The Washington Post:
https://www.washingtonpost.com/politics/courts_law/supreme-court-public-opinion/2021/09/25/379b51ec-1c6c-11ec-bcb8-0cb135811007_story.html
- Berruecos, S. (2003). Electoral Justice in Mexico: The Role of the Electoral Tribunal under New Federalism. *Journal of Latin American Studies*, 35(4), 801-825.
- Biglino, P., Darmanovic, S., & Ranchev, E. (2013). *Opinion on the Electoral Legislation of Mexico*. Venice Commission. Strasbourg, FR: Council of Europe.
- Black, R. C., & Spriggs, J. F. (2008). An Empirical Analysis of the Length of U.S. Supreme Court Opinions. *Houston Law Review*, 45(3), 621-682.
- Brito, R. (2021, September 15). *Brazil's Electoral Court to Probe Bolsonaro Rallies*. Retrieved from Reuters:
<https://www.reuters.com/world/americas/brazil-electoral-court-probe-bolsonaro-rallies-source-says-2021-09-15/>
- Butz, D. E., Plant, A., & Doerr, C. (2007). Liberty and Justice for All? Implications of Exposure to the U.S. Flag for Intergroup Relations. *Personality and Social Psychology Bulletin*, 33, 396-408.
- Chiao, V. (2021). Hyperlexis and the Rule of Law. *Legal Theory*, 27, 126-148.
- Dakolias, M. (1994). A Strategy for Judicial Reform: The Experience in Latin America. *Virginia Journal of International Law*, 36(1), 167-232.
- de Oca, R. M. (2018). *Issue Brief on Mexico's Electoral Authorities: Implications for the Rule of Law*. Houston: Rice University Baker Institute for Public Policy. Retrieved from
<https://www.bakerinstitute.org/research/mexicos-electoral-authorities/>
- de Sierra, S. G. (2014). *The Definitive Reform: How the 1996 Electoral Reform Triggered the Demise of the PRI's Dominant Party Regime*. Los Angeles: Dissertation: University of California at Los Angeles.
- Douglas, J. A. (2013). Discouraging Election Contests. *University of Kentucky Law Review*, 47(3), 1015-1039.

- Eisenstadt, T. A. (1999). Off the Streets and into the Courtrooms: Resolving Postelectoral Conflicts in Mexico. In A. Schedler, L. Diamond, & M. F. Plattner (Eds.), *The Self-Restraining State: Power and Accountability in New Democracies* (pp. 83-104). Lynne Rienner Publishing.
- Eisenstadt, T. A. (2004). Catching the State Off Guard: Electoral Courts, Campaign Finance, and Mexico's Separation of State and Ruling Party. *Party Politics*, 10(6), 723-745.
- Eisenstadt, T. A. (2004). *Courting Democracy in Mexico: Party Strategies and Electoral Institutions*. Cambridge: Cambridge University Press.
- Eisenstadt, T. A. (2018). Thinking Outside the (Ballot) Box: Informal Electoral Institutions and Mexico's Political Opening. *Latin American Politics and Society*, 45(1), 25-54.
- Epps, D. (2020, August 3). *The Supreme Court is Leaking: That's a Good Thing*. Retrieved from The Washington Post: <https://www.washingtonpost.com/outlook/2020/08/03/supreme-court-leaks-cnn-biskupic-confidentiality/>
- Estevez, F., Magar, E., & Rosas, G. (2008). Partisanship in Non-Partisan Electoral Agencies and Democratic Compliance: Evidence from Mexico's Federal Electoral Institute. *Electoral Studies*, 27, 257-271.
- Ferguson, G. W. (1956). To Robe or Not to Robe: A Judicial Dilemma. *Journal of the American Judicature Society*, 6, 166-171.
- Foley, E. B. (2012). Electoral Dispute Resolution: The Need for a New Sub-Specialty. *Ohio State Journal on Dispute Resolution*, 27(2), 281-290.
- Fontana, D. (2011). Docket Control and the Success of Constitutional Courts. In T. Ginsburg, & R. Dixon, *Comparative Constitutional Law* (pp. 624-641). Northampton, MA: Elgar.
- Gerken, H. (2009). Mexico's 2007 Election Reforms: A Comparative View. *Mexican Law Review*, 2(1), 163-172.
- Gibson, J. L., Lodge, M., & Woodson, B. (2014). Losing, but Accepting: Legitimacy, Positivity Theory, and the Symbols of Judicial Authority. *Law and Society Review*, 48(4), 837-866.
- Gibson, J., Caldiera, G., & Spence, L. K. (2003). The Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise? *British Journal of Political Science*, 33(4), 535-556.
- Grayson, G. W. (1976). The Making of a Mexican President, 1976. *Current History*, 49-52, 83.
- Hernandez-Huerta, V. A. (2017). Judging Presidential Elections Around the World: An Overview. *Election Law Journal*, 16(3), 377-396.
- Howard, R. M. (2005). Comparing the Decision Making of Specialized Courts and General Courts: An Exploration of Tax Decisions. *The Justice System Journal*, 26(2), 135-148.
- Jordan, E. R. (1982). Specialized Courts: A Choice. *Northwestern University Law Review*, 76, 745-785.
- Koch, C. H. (2004). The Advantages of the Civil Law Judicial Design as the Model for Emerging Legal Systems. *Indiana Journal of Global Legal Studies*, 11(1), 139-160.
- Langston, J. (2020). Why Do Parties Cheat? Institutional Choice in Mexico After Democratization. *Política y Gobierno*, 27(2), 1-31.
- Levy, M. K. (2011). The Mechanics of Federal Appeals: Uniformity and Case Management in the Circuit Courts. *Duke Law Journal*, 61(2), 315-392.

- Lewis, K. (2019). *A Code of Conduct for the Supreme Court? Legal Questions and Considerations*. Washington D.C.: Congressional Research Service.
- Light, P. C. (2006). The Tides of Reform Revisited: Patterns in Making Government Work, 1945-2002. *Public Administration Review*, 66(1), 6-19.
- Lindquist, S. A. (2007). Bureaucratization and Balkanization: The Origins and Effects of Decision Making Norms in the Federal Appellate Courts. *Richmond University Law Review*, 41(3), 659-706.
- Lindquist, S. A. (2011). Stare Decisis as Reciprocity Norm. In C. G. Geyh, *What's Law Got to Do with It? What Judges Do, Why They Do It, and What's at Stake* (pp. 173-191). Redwood City: Stanford University Press.
- Lindquist, S. A., Martinek, W. L., & Hettinger, V. A. (2007). Splitting the Difference: Modeling Appellate Decisions with Mixed Outcomes. *Law and Society Review*, 429-455.
- Martinez, V. R. (2020, November 5). *A Weakened Supreme Court Needs a Code of Ethics*. Retrieved from Bloomberg Law: <https://news.bloomberglaw.com/us-law-week/a-weakened-supreme-court-needs-a-code-of-ethics>
- McGuire, K. T. (2004). The Institutionalization of the U.S. Supreme Court. *Political Analysis*, 12(2), 128-142.
- Miller, M. C. (2014). Law Clerks and Their Influence at the US Supreme Court: Comments on Recent Works by Peppers and Ward M. *Law and Social Inquiry*, 39(3), 741-757.
- Mitofsky. (2020, December 10). *Trust Ranking in Institutions in Mexico*. Retrieved from consulta.mx: <http://www.consulta.mx/index.php/encuestas-e-investigaciones/item/1407-confianza-2020>
- Poblano, M. C. (2009). The New Electoral Reform in Mexico 2007-2008. In I.-A. I. Rights, *Trends and Perspectives of the Electoral Reform in Latin America* (pp. 129-144). Costa Rica: Capel Notebooks.
- Posner, R. (1983). Will the Federal Courts of Appeals Survive Until 1984? An Essay on Delegation and Specialization of the Judicial Function. *Southern California Law Review*, 56, 761-791.
- Randazzo, K. A., Waterman, R. W., & Fine, J. A. (2006). Checking the Federal Courts: The Impact of Congressional Statutes on Judicial Behavior. *Journal of Politics*, 68, 1006-1017.
- Randazzo, K. A., Waterman, R. W., & Fix, M. P. (2011). State Supreme Courts and the Effects of Statutory Constraint: A Test of the Model of Contingent Discretion. *Political Research Quarterly*, 64(4), 779-789.
- Reyes, P. M. (2019). To Post or Not to Post: Judges on Social Media. *Judges Journal*, 58(3), 20-24.
- Rios-Figueroa, J. (2021, January 30). *Mexico's Constitutional REforms: Threats to Judicial Independence From Within?* Retrieved from ConstitutionNet: <https://constitutionnet.org/news/mexicos-constittional-reforms-threats-judicial-indepndence-within>
- Rosati, A. (2021, August 12). *Bolsonaro Ratchets Up Attack's on Brazil's Electoral Court*. Retrieved from Bloomberg : <https://www.bloomberg.com/news/articles/2021-08-13/bolsonaro-ratchets-up-attacks-on-brazil-s-electoral-authority>
- Shapiro, M. (1981). *Courts: A Comparative and Political Analysis*. Chicago and London: The University of Chicago Press.
- Sobrado, L. A., & Aguilar, I. (n.d.). *Electoral Management Case Studies: Costa Rica A Powerful Constitutional Body*. Retrieved from ACE: The Electoral Knowledge Network: <https://aceproject.org/ace-en/topics/em/annex/electoral-management-case-studies/costa-rica-a-powerful-constitutional-body>

- Stone Sweet, A. (1999). Judicialization and the Construction of Governance. *Comparative Political Studies*, 147-184.
- Stone Sweet, A. (2000). *Governing with Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.
- Whitehead, L. (2007). The Challenge of Closely Fought Elections. *Journal of Democracy*, 18(2), 14-28.
- Zwier, P. J., & Barney, A. (2012). Moving to an Oral Adversarial System in Mexico: Jurisprudential, Criminal Procedure, Evidence Law, and Trial Advocacy Implications. *Emory Law Journal*, 26(1), 189-226.